



Date of Town Council Meeting: November 10, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Municipalities Continuing Disclosure Cooperation Initiative (“MCDC”)

Staff Contact: Clark Case, Director of Finance and Administrative Services
Barbara Notar, Deputy Town Attorney

Council Action Requested: A Resolution authorizing the Town Manager, in conjunction with the Director of Finance and Administrative Services, the Deputy Town Attorney, bond counsel and the Town’s financial consultant, to submit a questionnaire to the U.S. Securities and Exchange Commission (SEC) to allow the SEC to determine whether the Town should participate in the MCDC Initiative.

Staff Recommendation: Based on the recommendation of bond counsel and the Town’s financial consultant, staff recommends that the Town Council pass the attached Resolution.

Commission Recommendation: Not Applicable.

Fiscal Impact: If the Town participates in the MCDC Initiative, no penalty will be assessed against the Town. However, it is anticipated that the Town will incur additional costs to engage bond counsel in legal work to comply with the conditions set forth in the MCDC Initiative Settlement Agreement.

Executive Summary: The MCDC Initiative is a settlement program to require local governments to correct inaccurate statements about past continuing disclosures in bond Official Statements. Town Council approval is needed to allow the Town Manager to submit, by December 1, 2014, a questionnaire to the SEC containing information about the Town’s alleged inaccurate statements and the circumstances surrounding them. Once submitted, the SEC will review the Town’s alleged inaccurate statements and the circumstances surrounding them and determine whether they are so minor as to be immaterial or to allow the Town to participate in the MCDC Initiative.

Background: SEC rules require the Town, as a bond issuer, to provide continuing disclosures regarding the Town’s financial condition and operating data and a description of any instances in the previous 5 years in which the Town failed to comply with its commitment to provide continuing disclosure.

As part of the SEC’s initiative to bring local governments into compliance for continuing disclosures violations, it recently mandated that underwriters such as Citigroup and bond issuers like the Town “self-report” any inaccurate statements which may have occurred in the continuing disclosure process involved in bond issuances. On or about September 1, 2014, Citigroup, the underwriter for the Town’s 2011 bond issuance, reported that the Town violated the continuing disclosure rules in the following ways:

1. The Town failed to disclose (in 2011) that we filed the 2006 CAFR late. (The Town disclosed late filings in 2007 and 2008, but did not disclose 2006);

2. The 2013 CAFR was filed in a timely fashion but in the wrong format.
3. Two supplementary schedules that are required to be included in the continuing disclosure that are in addition to the CAFR were not filed between 2009 and 2013, because the Town thought the information was sufficiently covered by other schedules in the CAFR. While those schedules were similar, not all of the same information was included.

In order for the SEC to determine whether the Town is a candidate for the MCDC Initiative or whether the Town's violations are so minor that its participation is unnecessary, the Town must submit a questionnaire to the SEC by December 1, 2014.

If the Town enters into the settlement agreement, it will have to fulfill several conditions including establishing policies and training regarding continuing disclosure obligations, cooperate with any subsequent investigation by the SEC, etc. Bond counsel and the Town's financial consultant have advised town staff that entering into the MCDC Initiative, if required by the SEC, will not affect the Town's credit rating.

Under the fee schedule that staff expects the SEC to proceed under, the monetary fine will be \$75,000 per occurrence (which is interpreted to mean per transaction), but if the SEC proves fraud, the fine rises to \$375,000 per occurrence. The SEC enforcement staff has indicated that it will seek monetary penalties against those who do not take advantage of the MCDC Initiative.

Attachments: Resolution
MCDC Initiative Questionnaire for Self-Reporting Entities

PRESENTED November 10, 2014

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: DELEGATING TO THE TOWN MANAGER THE AUTHORITY TO DETERMINE WHETHER THE TOWN SHOULD PARTICIPATE IN THE MUNICIPALITIES CONTINUING DISCLOSURE COOPERATION INITIATIVE AND AUTHORIZING THE TOWN MANAGER AND THE TOWN ATTORNEY AND OTHER OFFICERS OF THE TOWN TO TAKE CERTAIN ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Town Council of the Town of Leesburg, Virginia (the "Town Council"), has been provided information regarding the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative"); and

WHEREAS, the Town Council understands that the Securities and Exchange Commission (the "SEC") proposed the MCDC Initiative in response to the SEC's belief that widespread issues exist in the municipal securities markets related to continuing disclosure compliance; and

WHEREAS, The Town of Leesburg, Virginia (the "Town"), is active in the municipal securities markets; and

WHEREAS, The Town Council has been informed that under the MCDC Initiative, municipal entities that participate in the MCDC Initiative must be prepared to agree to the standard settlement terms that will settle potential claims the SEC may have against the municipal entity related to the matters reported; and

WHEREAS, The Town Council desires to authorize the Town Manager, in consultation with the Town Attorney to investigate the MCDC Initiative and its potential impact on the Town and to authorize the Town Manager to participate in the MCDC Initiative if it is determined to be in the Town's interest to self-report; and

WHEREAS, The Town Council desires to further authorize the Town Manager and the Town Attorney to consult with all officers and agents of the Town (the "Officers") and bond

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counsel to the Town ("Bond Counsel") while investigating the MCDC Initiative and to prepare a disclosure policy for the Town Council's review.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg, Virginia:

1. The Town Council hereby authorizes the Town Manager (i) to consult with the Town Attorney, all other Officers and Bond Counsel regarding the MCDC Initiative, (ii) to investigate the impact of the MCDC Initiative on the Town and (iii) to inform the Town Council of the findings and actions in connection therewith.

2. The Town Council hereby delegates to the Town Manager, after having consulted with the Town Attorney, the authority (i) to determine whether it is in the Town's interest to participate in the MCDC Initiative and (ii) to authorize the Town Manager and the Town Attorney to take all action necessary or appropriate in connection with the Town's participation in the MCDC Initiative, including completing and signing the self-report questionnaire on behalf of the Town, if it is determined that the Town should participate in the MCDC Initiative.

3. The Town Council hereby authorizes and directs each Officer to cooperate with the Town Manager and the Town Attorney and participate, as needed, in the investigation of the impact on the MCDC Initiative on the Town.

4. The Town Council has been informed that the standard settlement terms under the MCDC Initiative require the Town to adopt a formal continuing disclosure policy, and accordingly, the Town Council hereby authorizes the Town Manager, in consultation with the Town Attorney, the other Officers and Bond Counsel, to prepare a formal continuing disclosure policy or policies

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for the Town Council's review, whether or not the a self-report is made on behalf of the Town under the MCDC Initiative.

5. The Town Council hereby authorizes the Town Manager, the Town Attorney and each Officer to execute and deliver on the Town's behalf such other instruments, documents or certificates, and to do and perform such things and acts as he or she shall deem necessary or appropriate to carry out the actions authorized by this Resolution.

6. This Resolution shall take effect immediately upon adoption.

PASSED this _____ day of _____, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council